

Issue: Permission to Appeal the Hearing Decision in Case No. 9891 to the Circuit Court; Ruling Date: December 11, 2012; Ruling No. 2013-3494; Agency: Department of Juvenile Justice; Outcome: Permission Granted.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution**

**APPEAL REVIEW RULING**

In the matter of the Department of Juvenile Justice  
Ruling Number 2013-3494  
December 11, 2012

Pursuant to Va. Code § 2.2-3006(B), the Department of Juvenile Justice (the agency) seeks approval from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management to appeal the final hearing decision in Case No. 9891 on the basis that it is contradictory to law. Notably, the Virginia Court of Appeals has held that in judicially challenging a hearing officer's decision as contradictory to law, a party must identify a "constitutional provision, statute, regulation or judicial decision which the hearing decision contradicts."<sup>1</sup> EDR rulings typically grant agency requests for permission to appeal when the agency has demonstrated at least one potential basis for contending that the hearing decision is contradictory to law, and when there is no evidence that the agency's appeal is based on any improper purpose such as to harass or cause delay.<sup>2</sup>

EDR cannot conclusively conclude that the objections raised by the agency are based on law. However, we are reluctant to deny the agency the opportunity to present its arguments to the circuit court, and believe the better course of action is to express concern but nonetheless allow the agency to pursue its appeal, as we find no evidence of any intent to harass or cause delay on the part of the agency.<sup>3</sup> The court can make the ultimate determination as to whether any of the stated objections meet the statutory "contradictory to law" grounds for judicial appeal.

Accordingly, the agency's request to appeal is granted. The agency may now file a notice of appeal with the circuit court in the jurisdiction in which the grievance arose. Any such notice must be filed within 30 calendar days of the date the hearing decision became final.<sup>4</sup> Approval to proceed with the circuit court appeal in no way reflects the substantive merits of the appeal or addresses the jurisdiction of the circuit court.

A handwritten signature in black ink, appearing to read "Chris M. Grab", written over a horizontal line.

Christopher M. Grab  
Director, Office of Employment Dispute Resolution

<sup>1</sup> See *Barton v. Va. Dept. of State Police*, 39 Va. App. 439; 573 S.E.2d 319 (2002).

<sup>2</sup> See, e.g., EDR Ruling Nos. 2010-2556; 2010-2663, 2008-1866; 2007-1534.

<sup>3</sup> See EDR Ruling No. 2012-3287.

<sup>4</sup> A hearing officer's decision becomes final once all timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the hearing officer has issued a revised decision. See *Grievance Procedure Manual* § 7.2(d).